

Order

Michigan Supreme Court
Lansing, Michigan

October 16, 2007

Clifford W. Taylor,
Chief Justice

ADM File No. 2005-36

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Proposed Amendment of
Rules 2.119, 7.204, and 7.205
of the Michigan Court Rules

On order of the Court, this is to advise that the Court is considering amendments of Rules 2.119, 7.204, and 7.205 of the Michigan Court Rules. This proposal is a republication of proposed amendments initially published November 7, 2006, in this file, and reflects significant changes from the original proposal. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 2.119 Motion Practice

(A)-(E)[Unchanged.]

(F) Motions for Rehearing or Reconsideration.

- (1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604[A], 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than ~~14~~ 21 days after entry of an order ~~disposing of~~ deciding the motion.

(2)-(3)[Unchanged.]

(G) [Unchanged.]

Rule 7.204 Filing Appeal of Right; Appearance

(A) Time Requirements. The time limit for an appeal of right is jurisdictional. See MCR 7.203(A). The provisions of MCR 1.108 regarding computation of time apply. For purposes of subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(1) An appeal of right in a civil action must be taken within

(a) [Unchanged.]

(b) 21 days after the entry of an order ~~denying~~ deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other ~~postjudgment~~ relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period ~~or within further time the trial court may have allowed during that 21-day period;~~

(c)-(d) [Unchanged.]

If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.

(2) An appeal of right in a criminal case must be taken

(a) [Unchanged.]

(b) within 42 days after entry of an order denying a timely motion for the appointment of a lawyer pursuant to MCR 6.425~~(F)~~(G)(1);

(c) [Unchanged.]

(d) within 42 days after the entry of an order denying a motion for a new trial, for ~~judgment~~ directed verdict of acquittal, or ~~for resentencing to correct an invalid sentence~~, if the motion was filed within the time

provided by ~~in~~ MCR 6.419(B), 6.429(B)(4), or 6.431(A)(4), as the case may be.

A motion for rehearing or reconsideration of a motion mentioned in subrules (A)(1)(b) or (A)(2)(d) does not extend the time for filing a claim of appeal, unless the motion for rehearing or reconsideration was itself filed within the 21- or 42-day period.

(3) [Unchanged.]

(B)-(H)[Unchanged.]

Rule 7.205 Application for Leave to Appeal

(A) Time Requirements. An application for leave to appeal must be filed within

- (1) 21 days after entry of the judgment or order to be appealed from or within other time as allowed by law or rule; or
- (2) 21 days after entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed, if the motion was filed within the initial 21-day appeal period.

For purposes of ~~this rule~~ subrules (A)(1) and (A)(2), “entry” means the date a judgment or order is signed, or the date that data entry of the judgment or order is accomplished in the issuing tribunal’s register of actions.

(B)–(E)[Unchanged.]

(F) Late Appeal.

(1)–(2)[Unchanged.]

(3) Except as provided in subrule (F)(4), leave to appeal may not be granted if an application for leave to appeal is filed more than 12 months after the later of:

(a) [Unchanged.]

(b) entry of the order or judgment to be appealed from, but if a motion for new trial, a motion for rehearing or reconsideration, or a motion for other ~~postjudgment~~ relief from the order or judgment appealed

was filed within the initial 21-day appeal period ~~or within further time the trial court may have allowed during that 21-day period~~, then the 12 months are counted from the entry of the order ~~denying~~ deciding the motion.

- (4) The limitation provided in subrule (F)(3) does not apply to an application for leave to appeal by a criminal defendant if the defendant files an application for leave to appeal within 21 days after the trial court decides a motion for a new trial, for directed verdict of acquittal, to withdraw a plea, or to correct an invalid sentence, if the motion was filed within the ~~6-month period prescribed~~ time provided in MCR 6.310(C), 6.419(B), 6.429(B), and 6.431(A), or if

(a)–(c)[Unchanged.]

A motion for rehearing or reconsideration of a motion mentioned in subrule (F)(4) does not extend the time for filing an application for leave to appeal, unless the motion for rehearing or reconsideration was itself filed within 21 days after the trial court decides the motion mentioned in subrule (F)(4), and the application for leave to appeal is filed within 21 days after the court decides the motion for rehearing or reconsideration.

A defendant who seeks to rely on one of the exceptions in subrule (F)(4) must file with the application for leave to appeal an affidavit stating the relevant docket entries, a copy of the register of actions of the lower court, tribunal, or agency, or other documentation showing that the application is filed within the time allowed.

(5) [Unchanged.]

(G) [Unchanged.]

Staff Comment: The proposed amendments of MCR 7.204 and MCR 7.205 would clarify that a party who seeks to appeal to the Court of Appeals has 21 days after the entry of an order deciding a motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed to file a claim of appeal or an application for leave to appeal, if the motion is filed within the initial 21-day appeal period. For consistency, the time limit for filing a motion for rehearing or reconsideration under MCR 2.119(F)(1) would be increased from 14 to 21 days, and the phrase “or within further time the trial court may have allowed during that 21-day period” was stricken from MCR 7.204(A)(1)(b) and MCR 7.205(F)(3)(b).

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by February 1, 2008, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2005-36. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 16, 2007

Corbin R. Davis
Clerk